

EXHIBIT 3

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3

4 VANTAGE FINANCIAL SERVICES, :
5 INC.,

6 Plaintiff,

7 vs

8 CASE NO.: 04-11686-WGY
9 NONPROFIT SERVICE GROUP and :
10 GEORGE MILLER,

11 Defendants.

12

13 DEPOSITION OF: RALPH W. SEMB
14 TAKEN: Pursuant to Notice by
15 Counsel for Plaintiff

16 DATE: October 28, 2005

17 PLACE: Shriners Hospital
18 2900 Rocky Point Drive
19 Tampa, Florida

20 TIME: 1:00 p.m. to 1:52 p.m.

21 REPORTED BY: Shelly Noriega, RPR
22 Notary Public
23 State of Florida at Large
24
25

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(Exhibits retained by Mr. Johnson.)

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1 APPEARANCES:

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15 Appeared on behalf of Defendants

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23 Appeared on behalf of Shriners Hospital
24
25

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1 The deposition of RALPH W. SEMB, taken pursuant to
2 notice by counsel for the Plaintiff, on October 28, 2005,
3 commencing at 1:00 p.m., at Shriners Hospital, 2900 Rocky
4 Point Drive, Tampa, Florida, before Shelly Noriega, RPR,
5 Notary Public, State of Florida at Large.

6 RALPH W. SEMB,

7 having been duly sworn to tell the truth, the whole
8 truth, and nothing but the truth, was examined and
9 testified as follows:

10 EXAMINATION

11 BY MR. JOHNSON:

12 Q Good afternoon, Mr. Semb. I'm Laurence
13 Johnson, and I represent the plaintiff Vantage Financial
14 Services in this case. Would you just identify yourself
15 by giving your full name for the record.

16 A I'm Ralph W. Semb, S-E-M-B. I'm from Erving,
17 Massachusetts, and I'm the chairman of the board of
18 trustees, Shriners Hospitals for Children.

19 Q In May and June of 1999 did you have an
20 association with Shriners Hospitals for Children?

21 A Yes.

22 Q What position did you hold at that time, sir?

23 A May and June of 1999, I was --

24 Q If there's any difference, why don't we just
25 make it the spring of '99, say February on.

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1 **A Correct.**

2 Q Now, in the last paragraph of that affidavit,
3 Mr. Semb, you referred to some of the provisions of
4 Paragraph 13.2 of the agreement as executed and you say
5 that "with respect to that that Shriners would not have
6 entered into the agreement absent the inclusion of that
7 provision in Paragraph 13.2 as written." Do you see that
8 language?

9 **A Upon conclusion of said 36-month period, is
10 that what you're referring to?**

11 Q No, the statement below that.

12 **A "Shiners would not have entered into the
13 agreement absent the inclusion" -- that's correct.**

14 Q Absent the inclusion of Paragraph 13.2 of the
15 agreement as written?

16 **A Would not have entered into the agreement
17 absent the inclusion, yes, sir.**

18 Q Okay. Now, that language was -- the language
19 of whoever prepared the affidavit was not your language,
20 was it?

21 **A Not mine.**

22 Q Okay. Is it fair to say, Mr. Semb, that when
23 you signed that affidavit that what you intended to
24 communicate by that language was that in your
25 understanding SHC would not have entered into the Vantage

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1 **it would not cost us anything and I'm assuming that's
2 exactly what that meant.**

3 **BY MR. JOHNSON:**

4 Q And what you intended to communicate in that
5 statement in your affidavit was that a provision such as
6 that in Paragraph 13.2 which provided in SHC's estimate
7 satisfactory assurance that it wouldn't have to cut a
8 check from its own resources to pay for program charges
9 you wouldn't have entered into the agreement with Vantage
10 absent that kind of a provision?

11 **A That's true.**

12 MR. GRIFFIN: Object.

13 **BY MR. JOHNSON:**

14 Q That what's you were intending to communicate?

15 **A Yes.**

16 Q That's really all you were intending to
17 communicate, isn't it?

18 **A That we would not cost Shriners Hospital
19 anything and we needed to be assured of that.**

20 MR. JOHNSON: Okay. Thank you, sir. I have no
21 further questions.

22 **EXAMINATION**

23 **BY MR. GRIFFIN:**

24 Q I have one question. Sitting here today there
25 is no way you can say whether you would have agreed to

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1 agreement without the inclusion of a provision such as
2 that appearing in Paragraph 13.2 which gave you adequate
3 assurance -- gave SHC adequate assurance that it would
4 not have to pay for program charges out of its own
5 nonprogram-related resources?

6 MR. GRIFFIN: Objection.

7 **A True.**

8 **BY MR. JOHNSON:**

9 Q I take it you weren't intending to communicate
10 by that language that you thought that SHC was
11 irretrievably wedded to the precise words of Paragraph
12 13.2 and to nothing else?

13 MR. GRIFFIN: Objection.

14 **A Say it again.**

15 **BY MR. JOHNSON:**

16 Q Okay. Yeah. When you said in that last
17 statement of your affidavit that SHC wouldn't have
18 entered into an agreement without the provision of
19 Paragraph 13.2 as written, you weren't intending to say
20 that SHC was irretrievably wedded to the precise words of
21 Paragraph 13.2 and that it wouldn't have entered into an
22 agreement with Shriners with Vantage without those
23 provisions with those exact words?

24 MR. GRIFFIN: Objection.

25 **A All I know is we entered into an agreement that**

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1 any different form of the contract than the one that's
2 set forth in Exhibit 2 to Jay Fleisher's deposition; is
3 that correct?

4 **A Yes.**

5 MR. GRIFFIN: Thanks.

6 **EXAMINATION**

7 **BY MR. JOHNSON:**

8 Q By that, I take it you mean there's no way you
9 can say one way or the other what you would have agreed
10 to some --

11 **A I wouldn't have agreed to any other provision,
12 I don't believe.**

13 Q Well, when you say you wouldn't have agreed to
14 any other provision, didn't you just tell me a moment
15 ago, Mr. Semb, that your concern with respect to this
16 matter was that SHC was not going to be in a position of
17 ever having to pay for any shortfall on this program out
18 of its nonprogram-related resources and that as long as
19 the contract gave you adequate assurance that you were
20 protected in that manner you were going to be satisfied?

21 MR. GRIFFIN: Objection.

22 **A So where did I go wrong in the words here? Am
23 I understanding what you said?**

24 **BY MR. JOHNSON:**

25 Q Yeah. I think if you are agreeing with me

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1 now -- I think what you've just told Mr. Griffin a moment
 2 ago was a little different from that. You told him a
 3 moment ago that you not only wanted assurance that you
 4 wouldn't have to pay for program shortfalls out of
 5 Shriners nonprogram-related resources but that you wanted
 6 this exact assurance and no other.
 7 **A That's what I thought he said.**
 8 **Q** Well, okay.
 9 **MR. GRIFFIN:** I believe you said yes, right?
 10 **THE DEPONENT:** Yeah.
 11 **BY MR. JOHNSON:**
 12 **Q** But the point is, now you've just told me,
 13 though, that as long as the contract contained a
 14 provision that protected Shriners by some adequate means
 15 from ever having to be liable out of its own resources
 16 for paying for program shortfalls that that was what
 17 Shriners wanted and that's what would have satisfied you?
 18 **MR. GRIFFIN:** Objection.
 19 **BY MR. JOHNSON:**
 20 **Q** Am I not correct?
 21 **A That's what did satisfy us.**
 22 **Q** And I understand this particular provision
 23 satisfied you?
 24 **A Mmm-hmm.**
 25 **Q** But I take it you recognize that it's also

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1 possible that some different wording, maybe even some
 2 different modality, if it also provided clear protection
 3 that you were never going to have to pay for a shortfall
 4 out of Shriners' own nonprogram-related resources that
 5 would have addressed the issue and that would have
 6 satisfied you?
 7 **MR. GRIFFIN:** Objection.
 8 **BY MR. JOHNSON:**
 9 **Q** Wouldn't it?
 10 **A I don't know how it could have been any**
 11 **different.**
 12 **Q** Well, that isn't my question. I'm not asking
 13 you to imagine whether it could have been any different.
 14 **A It's a hypothetical thing, isn't it? I mean,**
 15 **it's there --**
 16 **Q** Well, let me do it in non-hypothetical form.
 17 **MR. GRIFFIN:** It's impossible.
 18 **MR. JOHNSON:** You wait and see.
 19 **A Go for it.**
 20 **BY MR. JOHNSON:**
 21 **Q** Is it not your testimony, sir, that any
 22 contract provision which clearly protected Shriners
 23 against any liability for having to pay program
 24 shortfalls out of its own resources would have satisfied
 25 your concern in that regard and would have satisfied you?

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1 **MR. GRIFFIN:** Objection. I think it's like the
 2 seventh time you've asked him.
 3 **A I don't know how I can say it any different**
 4 **than it was there. If it's written there, it's the way**
 5 **it is.**
 6 **BY MR. JOHNSON:**
 7 **Q** I understand that, sir.
 8 **A If there was -- if you -- I don't know -- how**
 9 **can you reword it to be any different?**
 10 **Q** I'm not --
 11 **A I guess those of us in the western part of the**
 12 **state don't understand the eastern part of the state**
 13 **but --**
 14 **Q** It's not that hard. I don't have any trouble
 15 communicating with my neighbors out in Alford at all.
 16 I'm not delving into the question of how one would go
 17 about drafting some alternative provision over your
 18 concern. Isn't it fair to say that your concern and the
 19 concern of your colleagues was that with the substance,
 20 you wanted to be protected against having to pay for
 21 shortfalls out of SHC's other resources?
 22 **MR. GRIFFIN:** Objection.
 23 **A Yes.**
 24 **BY MR. JOHNSON:**
 25 **Q** That's what you were concerned about, weren't

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1 you?
 2 **A That's what we did.**
 3 **Q** And you were concerned with the substance of
 4 that issue, that you have the protection, not with the
 5 words that provided it, weren't you?
 6 **MR. GRIFFIN:** Objection.
 7 **A Yeah.**
 8 **MR. JOHNSON:** Good. Thank you. That's it.
 9 **MR. GRIFFIN:** I'll ask him to clarify because
 10 this has been so muddled.
 11 **EXAMINATION**
 12 **BY MR. GRIFFIN:**
 13 **Q** Sitting here today there is no way you can say
 14 you would have agreed to any contract other than the
 15 contract that's before you, correct?
 16 **MR. JOHNSON:** Objection to the form. Asked and
 17 answered.
 18 **A You are right. That's it.**
 19 **BY MR. GRIFFIN:**
 20 **Q** Mr. Johnson's questions about different
 21 versions are speculation in your mind, correct?
 22 **A Yes, sir.**
 23 **EXAMINATION**
 24 **BY MR. JOHNSON:**
 25 **Q** Forces me to ask one further question.